

HOUSE BILL NO. 530

INTRODUCED BY D. KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE ENFORCEMENT OF LAWS PROHIBITING DISCRIMINATION; ALLOWING A PARTY TO A COMPLAINT BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY 20 DAYS TO RESPOND TO A WRITTEN REQUEST BY THE DEPARTMENT THAT THE PARTY FURNISH INFORMATION TO THE DEPARTMENT; PROVIDING FOR A DELAY OF THE DEADLINE FOR COMPLETING A HEARING THAT IS EQUIVALENT TO THE TIME TAKEN TO REQUEST AND APPOINT AN ALTERNATIVE HEARINGS OFFICER; PROVIDING THE RIGHT OF SUBSTITUTION OF AN ADMINISTRATIVE HEARINGS OFFICER; REQUIRING THE DEPARTMENT TO DISMISS A COMPLAINT BEFORE THE DEPARTMENT, FOR THE PURPOSES OF ALLOWING THE CASE TO PROCEED IN DISTRICT COURT, IF A PARTY TO THE COMPLAINT REQUESTS DISMISSAL; AND AMENDING SECTIONS 49-2-504, 49-2-505, AND 49-2-509, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal investigation and conciliation. (1) (a) The department shall informally investigate the matters set out in the complaint promptly and impartially. If the department determines that the allegations are supported by a preponderance of the evidence, it shall attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, identified in the investigation. The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(b) A party has 20 days from the date of receipt to respond to a written request from the

department that the party furnish the department with information about the subject of a complaint.

~~(b)~~(c) If a complaint is filed relative to an employment-related complaint and if the commissioner decides that the inclusion of documents or information contained in the complaint would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information contained in the complaint. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(2) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer or responding to a written request from the department for information may be extended by a showing of good cause.

(3) The department shall commence proceedings within 30 days after receipt of a complaint.

(4) The department shall make a finding regarding the merit or nonmerit of the complaint within 180 days after a complaint is filed, except that the department shall make the finding within 120 days after a complaint is filed under 49-2-305."

Section 2. Section 49-2-505, MCA, is amended to read:

"49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the department shall hold a hearing on the complaint. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) (A) A party to a contested case hearing may, within 10 days after notice of the appointment of a hearings officer, move for substitution of the hearings officer. The department shall appoint a different hearings officer within 15 days of receipt of the motion. A party may exercise the right to appointment of a different hearings officer only once in any particular case.

(B) THE TIME ALLOWED FOR COMPLETING A CONTESTED CASE HEARING UNDER THIS SECTION MAY BE EXTENDED BY A PERIOD OF TIME EQUAL TO THE PERIOD OF TIME TAKEN TO REQUEST A SUBSTITUTION OF THE HEARINGS OFFICER AND TO APPOINT AN ALTERNATIVE HEARINGS OFFICER AS PROVIDED FOR IN SUBSECTION (2)(A).

(C) A PARTY MOVING FOR A SUBSTITUTION OF THE HEARINGS OFFICER UNDER SUBSECTION (2)(A) SHALL REMIT A FILING FEE OF \$100 TO THE DEPARTMENT WITH THE MOTION FOR SUBSTITUTION.

~~(2)~~(3) (a) If the parties mutually agree to permit the department to retain jurisdiction of the case

1 under this chapter for a period of time that exceeds 12 months after the complaint was filed, then the
2 parties shall stipulate to a schedule for proceedings to be established by the department.

3 (b) The department shall, not later than 395 days after the complaint was filed, set a date for an
4 administrative hearing in the case.

5 (c) The case must be heard no later than 90 days after the date is set by the department. The
6 department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of
7 good cause.

8 ~~(3)~~(4) (a) The hearing must be held by the department in the county where the unlawful conduct
9 is alleged to have occurred unless a party charged in the complaint requests and is granted a change of
10 venue for good cause shown. The case in support of the complaint may be presented before the
11 department by the complainant or an attorney representing the complainant. The hearing and any
12 subsequent proceedings under this chapter must be held in accordance with the applicable portions of the
13 Montana Rules of Civil Procedure as adopted by the department.

14 (b) Upon request of the hearings officer, the department may present evidence with regard to
15 activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the
16 department may not represent either party in a contested case hearing.

17 ~~(4)~~(5) A party may appeal a decision of the hearings officer to the commission. A party shall
18 provide notice of its appeal to the commission, the department, and all parties within 10 business days
19 of receipt of the notice of decision of the administrative hearing. The commission shall hear all appeals
20 within 120 days of receipt of notice of appeal. The commission shall render a decision within 90 days of
21 hearing the appeal.

22 ~~(5)~~(6) All hearings conducted under this section may, upon stipulation of the parties, be heard
23 telephonically.

24 ~~(6)~~(7) The commission may make provisions for defraying the expenses of an indigent party in a
25 contested case hearing held pursuant to this chapter.

26 ~~(7)~~(8) The prevailing party in a hearing under this section may bring an action in district court for
27 attorney fees. The court, in its discretion, may allow the prevailing party reasonable attorney fees. An
28 action under this section must comply with the Montana Rules of Civil Procedure."

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30 **Section 3.** Section 49-2-509, MCA, is amended to read:

"49-2-509. Conclusion of complaint -- filing in district court. (1) Except as provided in subsection

(2), the department shall, at the request of either party, conclude the administrative proceedings if:

(a) the department has completed its investigation of a complaint filed pursuant to 49-2-305; or

(b) 12 months have elapsed since the complaint was filed.

(2) The department ~~may not refuse to~~ shall conclude the administrative proceedings unless:

(a) the party requesting the conclusion of the administrative proceedings has waived the right to request filing in the district court;

(b) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the department fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(c) the party requesting conclusion of the administrative proceedings has unsuccessfully attempted through court litigation to prevent the department from investigating the complaint.

(3) The department shall dismiss a complaint filed under this chapter and the complainant may file a discrimination action in district court if:

(a) the commission or the department lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes of address;

(c) the department determines that the allegations of the complaint are not supported by a preponderance of the evidence; ~~or~~

(d) the department determines that the allegations in the complaint are supported by a preponderance of the evidence and a party requests dismissal of the complaint no later than 20 days after the party requesting dismissal receives the department's notification of hearing; or

~~(d)~~(e) the department determines that the commission or the department will not or cannot hold a hearing within 12 months after the filing of the complaint.

(4) A decision of the department to dismiss a complaint brought under this chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on the party. The commission shall review the decision in informal proceedings under 2-4-604. A party may ask the district court to review a decision of the commission made under this section. The review must be de novo.

(5) Within 90 days after receipt of a notice under subsection (1) or (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection

1 (1), the complainant may commence a civil action in the district court in the district in which the alleged
2 violation occurred for appropriate relief. Except as provided in 49-2-510, if the complainant fails to
3 commence a civil action in the district court within 90 days after receipt of the letter, notice, or order
4 issued by the commission or the department, the claim is barred.

5 (6) If the district court finds, in an action under this section, that a person, institution, entity, or
6 agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice
7 alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission
8 order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

9 (7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged
10 violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the
11 discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or
12 request for relief based upon the acts may not be entertained by a district court other than by the
13 procedures specified in this chapter."

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15 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

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